IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1203 of 2007

S. Pichai Anmmal .. Petitioner

Vs

1. The State of Tamil Nadu
   rep. by its Secretary to Government
   Prohibition and Excise Department
   Fort St. George, Chennai-9.

2. The District Collector and
   District Magistrate
   Nagapattinam District
   Nagapattinam. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

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For Petitioner : Mr.R.Shivakumar

For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

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ORDER

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner is the daughter of the detenue, Rasa @ Chinnamani, wife of Rayappa Nadar. The detenue was incarcerated by order dated 24.7.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding her as a Bootlegger. Hence, the petitioner seeks a writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 24.7.2007 in C.O.C.No.34/2007 against her mother, who is now confined at Special Prison for Women, Tiruchirappalli, to set aside the same and to direct the respondents to produce the above said detenue before this Court and set her at liberty.

2. According to the respondents, the detenue was found selling illicit arrack on 13.7.2007. The Inspector of Police, Mayiladuthurai apprehended the detenue and seized the illicit arrack found therein. The samples were sent for chemical analysis and it was found that the arrack contained 8.1% mg atropine per 100 ml. A case was registered in Crime No.834/2007 under Section 4(1)(i) and 4(1)(aaa) r/w 4(1-A) of the Tamil Nadu Prohibition Act.

3. The second respondent, taking note of the above case as a ground case and finding that there are six adverse cases of alike nature and having satisfied that there is a compelling necessity to detain the detenue in order to prevent her from indulging in the activities which are prejudicial to the maintenance of public order and public health, ordered her detention dubbing her as a bootlegger.

4. The learned counsel for the petitioner challenges the impugned order of detention only on the ground of delay in preparing the rejection order.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22

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(5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6. Coming to the case on hand, admittedly, objecting to the order of detention dated 24.7.2007, a representation was made on behalf of the detenue on 6.9.2007, which was received by the Government on 7.9.2007. Remarks were called for from the detaining authority on 8.9.2007, which was received by the detaining authority on 8.9.2007 itself. The detaining authority, in turn, called for parawar remarks from the sponsoring authority on 13.9.2007 and on receipt of the same on 18.9.2007, the detaining authority sent it to the Government on 21.9.2007 and the same was received on 26.9.2007. Thereafter, the file was submitted on 26.9.2007 itself and the same was considered by the Under Secretary on 26.9.2007 itself and Additional Secretary on 27.9.2007. The file was considered by the Minister on 27.9.2007 itself. However, the rejection letter was prepared on 5.10.2007, after a delay of eight days, which is not properly explained. Even taking note of the intervening holidays, viz., 29.9.2007, 30.9.2007 and 2.10.2007 (being Saturday, Sunday and public holiday), the delay of five days in preparing the order of rejection, is admittedly unexplained and inexcusable. Thereafter, the

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order of rejection was sent on 5.10.2007 and served on the detenue on 8.10.2007.

7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

9. In the instant case, there is delay of five days in preparing the order of rejection, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition.

In the result, the order of detention dated 24.7.2007 is set aside. The detenue is directed to be set at liberty forthwith unless her presence is required in connection with any other case.

ATR

Sd/-
Asst.Registrar

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Sub Asst.Registrar

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To:

1. The Secretary to Govt.,
   State of Tamilnadu,
   Prohibition and Excise Department,
   Fort St. George, Chennai-9.

2. The District Collector and
   District Magistrate
   Nagapattinam District
   Nagapattinam.

3. The Superintendent
   Special Prison for Women
   Central Prison Campus
   Tiruchirapalli.

4. The Joint Secretary to Government,
   Public (Law & Order)
   Fort Saint George,
   Chennai- 9.

5. The Public Prosecutor,
   High Court, Madras.

VSV(CO)
dcp/26.11 H.C.P.No.1203 of 2007

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